

# Notice of Allowability

Application No.

09/438,104

Examiner

Donna Jagoe

Applicant(s)

SAEBO ET AL.

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment dated 6/4/07.
2. ☒ The allowed claim(s) is/are 7,8,10,11,13,14,16,17,19 and 20.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☒ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413);  
Paper No./Mail Date 20070928
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

\*The drawings submitted 11/10/99  
are accepted..

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with J. Mitchell Jones on September 28, 2007.

The application has been amended as follows:

Claim 7, lines 2-3 of the claim, after the word "wherein the total amount of" add the word ---- said -----.

Claim 10, line 3 of the claim, after the word "wherein the total amount of" add the word ---- said -----.

Claim 13, lines 3-4 of the claim, after the word "wherein the total amount of" add the word ---- said -----.

Claim 16, lines 3-4 of the claim, after the word "wherein the total amount of" add the word ---- said -----.

Art Unit: 1614

Claim 19, line 4 of the claim, after the word "wherein the total amount of" add the word ---- said -----.

Cancel claim 22.

Cancel claim 23.

The following is an examiner's statement of reasons for allowance:

After a careful search of issued patents and relevant commercial databases, no references were found that would either anticipate or make obvious applicant's claimed invention. Cain et al. of WO 97/18320 teach compositions of conjugated linoleic acid (CLA) that are used in food products (page 1). Cain et al. teach a 91.8% CLA product of which 49.7% was the cis 9, trans 11-isomer and 50.3% was the trans 10, cis 12-isomer (see example 1). Cain et al teach the alkyl esters of these CLA's (see examples 1 and 3).

Cook et al. U.S. Patent No. 5,554,646 teach an active form of CLA, i.e., 10,12-octadecadienoic acid and 9,11-octadecadienoic acid, which includes esters, salts and free acids of conjugated linoleic acid and teach a food product comprising an active form CLA (column 1, lines 39-60 and examples 1-4).

However the Saebo declaration shows that other isomers are also present in the resulting composition. Similarly, the Saebo Declaration shows that other isomers besides the c9,t11 and t10, c12 octadecadienoic acid were necessarily present in the

Art Unit: 1614

Cain et al. example. Such as, *inter alia*, 2.24% t9, 11 and t10,12 CLA. The skilled artisan is not provided with motivation to have a composition of at least 50% c9, t11- and t10, c12-octadecadienoic acid and additionally have less than 1% of content of 8,10- and 11,13 octadecadienoic acid.

The case is allowed in further view of the decision by the Board of Patent Appeals and Interferences, which was mailed on August 30, 2005 for U.S. Application No. 09/132/593 (now U.S. Patent No. 7,078,051).

#### ***Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The declaration submitted November 10, 1999 by the applicants has not been signed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

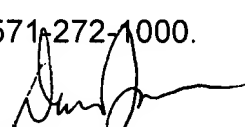
Art Unit: 1614

***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donna Jagoe whose telephone number is (571) 272-0576. The examiner can normally be reached on Monday through Friday from 9:00 A.M. - 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on (571) 272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Donna Jagoe  
Patent Examiner  
Art Unit 1614

September 28, 2007

  
**ARDIN H. MARSCHEL**  
**SUPERVISORY PATENT EXAMINER**